IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1424 of 2011
IN
Civil Writ Jurisdiction Case No. 5251 of 2008

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1. The State of Bihar
2. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
3. The Additional Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
4. The Deputy Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
5. The Commissioner-cum-Secretary, Excise and Prohibition Department, Government of Bihar, Patna
6. The Under Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
7. The Secretary, Planning and Development Department, Government of Bihar, Patna.
8. The Director, Bihar State Planning Board, Patna
9. The Deputy Director, Bihar State Planning Board, Patna
10. The Deputy Secretary, Bihar State Planning Board, Patna.

.... Appellant/s

Versus

Smt. Bhagirathi Devi, W/o Laxman Rai, permanent resident of village-Govindpur, Police station and District-Buxar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG-IV
Mr. AMIT KR. Jha (AC-AAG6)

For the Respondent/s : Mr. Satish Chandra Mishra
Mr. Nurul Hoda

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT MR. JUSTICE ANIL KUMAR UPADHYAY
(Per: HONOURABLE
Date: 07-09-2017

<u>I.A. 1913 of 2013</u>

The instant interlocutory application has been filed by the widow of the writ petitioner who died during the pendency of the present letters patent appeal.

2. Considering the fact that there is no other legal heir of

the writ petitioner other than the widow Bhagirathi Devi, the application filed on behalf of the respondent-petitioner is allowed. Let the name of original sole appellant be expunged in the cause title of the memo. of appeal and in his place Bhagirathi Devi be substituted.

LPA No. 1424 of 2011

3. The instant letters patent appeal has been filed by the appellant-State of Bihar and its officials against the judgment of the writ court passed in C.W.J.C. No. 5251 of 2008 dated 05.05.2011 whereby the writ court quashed the order of imposing punishment of compulsory retirement on the petitioner and consequential order of issuing notice for withholding the entire salary for his suspension period.

4. The relevant facts for deciding the instant appeal are as follows;-

The writ petitioner on the request of the Private Secretary to the Hon'ble Minister of Excise for supply of certain items in the house from store of the department, recommended the name of M/s. Pradeep Stationery Works and after the recommendation of the petitioner, superior officials approved the proposal and thereafter, the stationery item was supplied and after supply bill was presented for payment against supply of stationery and in the bill there was some interpolation, however the bill was presented before the Drawing and

Disbursing Officer and other official who approved the bill and payments were made. The petitioner was subjected to departmental proceeding after payment of the bill was made. It appears that Vigilance Case was also registered in connection with alleged interpolation in the bill and payment for supply of certain items against Ram Lakhan Prasad, Mahendra Narayan Choudhary, Radha Nandan Prasad, Surya Dayal Sahu, Sri Pashupati Nath Rai and Pradeep Kumar. However, the petitioner was not specifically named in the FIR. It appears that vide memo no. 982 dated 21.08.2002, the petitioner was subjected to the departmental enquiry on the allegation of dereliction of duty and serious misconduct while discharging his duty as Store Keeper in the department. He was put under suspension and the suspension of the petitioner was revoked on 15.12.2005 in view of the fact that the departmental proceeding initiated against the petitioner remained inconclusive. The Enquiry Officer submitted his enquiry report on 6.3.2007 holding that the charges have not been proved against the petitioner. Thereafter, on 10.07.2007 a show cause notice was issued to the petitioner in purported exercise of power under Rule 18 (2) (3) of the Bihar Civil Servant (Classifications, Control and Appeal) Rule 2005 differing with the finding of the Enquiry Officer. The petitioner thereafter, submitted his reply and vide office order dated 26.10.2007 the petitioner was inflicted punishment of compulsory retirement. The petitioner thereafter filed

Review Application under Rule 24(2) of the Bihar Civil Servant (Classifications, Control and Appeal) Rules, 2005. However, the review application was dismissed holding that review is not maintainable and appeal can be preferred before the Member, Board of Revenue. The writ petitioner under the aforesaid circumstances filed C.W.J.C. No. 5251 of 2008. The writ petition was heard by the writ court and on consideration of entire material on record the writ court quashed the order of imposing punishment of compulsory retirement and also directed for payment of consequential relief in the nature of salary for his suspension period except during the period he was in judicial custody. The writ court has noted that the Registrar and the Secretary to the Commissioner, Excise Department has approved the note of the petitioner. The writ court also noted that the petitioner was not in any manner instrumental in the preparation of the bill. The bill was presented before the Secretary, Drawing and Disbursing Officer and the Accountant has passed the bill and considering the aforesaid fact, the Enquiry Officer exonerated the petitioner from the charge levelled against him. The writ court on consideration of the enquiry report and the reasoning differing with the finding of the Enquiry Officer and noticing the facts discussed above held out that since the supply order was approved by the Secretary to the Commissioner of Excise Department and the bill was approved by Secretary, Drawing and Disbursing Officer and the

Secretary and the Accountant who has passed the bill have not been proceeded against and as such the writ court did not find any justification for punishing the writ petitioner and accordingly allowed the writ petition.

5. Mr. Anjani Kumar, learned AAG appearing on behalf of the appellant State has submitted that the writ court has committed error in allowing the writ application and setting aside the order of imposing punishment of compulsory retirement as the writ court at the very outset noted that there is no procedural lapse in the matter of conducting departmental proceeding.

6. The submission of Mr. Anjani Kumar, AAG-IV that in view of the finding of the writ court that there was no procedural impropriety, the decision of the writ court is unsustainable, fallacious and does not merit any consideration the writ court has gone into the entire substantive aspect of the allegation, the enquiry report exonerating the petitioner from all the charges, considering the basic fact that the persons responsible for approving the proposal and passing the interpolated bill were not even proceeded against and as such the writ court found that even in the criminal case this writ petitioner was not made named accused in the FIR and as such in the totality of facts situation the writ court rightly interfered with the order of punishment.

7. During the course of hearing, Mr. Anjani Kumar has

not make out any case of error of record committed by the writ court. However, his submission centralized around the fact that there was no procedural impropriety in the departmental proceeding.

8. Mr. Satish Chand Mishra appearing on behalf of the respondents submitted that the vigilance case for the same allegation of supply by M/s. Pradeep Stationery Works in which several officials of departments were made accused culminated in quashing of the entire proceeding of Special Case No. 18 of 1996 vide order dated 17.1.2012 in Cr. Misc. No. 2747 of 2012.

9. Mr. Anjani Kumar confronted with the quashing of the entire vigilance case, submitted that standards of proof in the departmental proceeding and in criminal case are different as in criminal case the standard of proof is to establish the charges "beyond reasonable doubt" whereas in the departmental proceeding standard of proof is preponderance of probability. The submission of Mr. Anjani Kumar in this regard is also unsustainable in view of the fact that the instant case is not the case of acquittal in a criminal trial but quashing of entire vigilance case holding that no criminal offence is made out in the case, therefore, the distinction of standard of proof is of no relevance. Moreover, in the departmental proceeding, the Enquiry Officer has exonerated the petitioner assigning the cogent reason and on discussion of entire attending facts and circumstances.

10. Considering the materials on record, finding of the

writ court is based on proper scrutiny of the entire materials on record and supported by the reasoning, we see no reason to make any indulgence in this case.

11. In view of the finding of the Enquiry Officer in favour of the writ petitioner, the quashing of the criminal vigilance case and also the fact that those who approved the proposal for supply by M/s. Pradeep Stationery Works and instrumental in passing the bill and making the payment were not even proceeded against, the decision of the writ court interfering into the order of punishment is well founded and does not warrant any interference, accordingly, the judgment and order of the writ court is upheld. The letters patent appeal is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
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